IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO. 11 OF 2007

MR. EDUARD SCHRABECK,PRESENTLY IN JUDICIAL LOCKUP, MAPUSA GOA. ....Appellant

Versus

THE STATE THROUGH POLICE INSPECTOR, PANAJI GOA. ....Respondent

Mr. Anthony D' Silva, Advocate for the Appellant.
Ms. Winnie Coutinho, Public Prosecutor for the State.

Coram:- N. A. BRITTO, J.

Date:- 7th February, 2007

ORAL ORDER

Heard learned Counsel on behalf of the applicant/accused and learned Public Prosecutor on behalf of the respondent.

2. The petitioner who is an accused undergoing trial under Section 20(b)(ii)(C) of N.D.P.S. Act, 1985, has assailed the Order of the learned Special Judge dated 23.01.2007, disallowing the petitioner/accused to postpone the cross examination of Pw3, the Panch witness, until the other panch witness is examined. There can be no dispute that sub-section (2) of Section 231 of the Code (Code of Criminal Procedure, 1973), gives a discretion to the Court to permit the cross examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross examination. The contention raised on behalf of the petitioner/accused is that in case the cross examination of Pw3, the panch witness, is completed by the accused, then the other panch witness will know the defence of the accused as disclosed to Pw3.

3. Sub-section (2) of Section 231 certainly gives discretion to the

Court to defer the cross examination of witness until any other witness is examined. In other words, the discretion can be exercised according to exigencies of a particular situation. As stated in Md. Sanjay & anr. v. State of West Bengal (2000 Cr.L.J. 608), in the absence of any exigency or compelling reason, it is always for the party to decide in which order it will produce or examine it witnesses. Ordinarily, a witness is first required to be examined in chief and then to be cross examined and if necessary re-examined and that is the practice followed in the Courts. The submission made on behalf of the petitioner/accused that he would be compelled to disclose his defence, does not appear to be the compelling reason, why the trial Court had to defer the cross examination of Pw3, the panch witness, until the next panch witness is examined. One does not even know whether the other panch witness will be examined or not and the Court cannot certainly extract an assurance from the prosecution that he will not be examined. It is for the prosecution to decide which witnesses will be required by them to prove their case. The Judgment relied upon by the petitioner and reported in State of Karnataka v. Annegowda (2006 Cri. L.J. 3630), has no application to the facts of the case. In fact, what has been rejected in that Judgment is the submission that the accused would be required to divulge his defence in cross examination under Section 313 Cr.P.C., when there were other cases pending against him. The fact that the accused will be compelled to disclose his defence in cross examination of Pw3, the panch witness, does not appear to have been a compelling reason to defer his cross examination. Cross examination can be done without disclosing any defence at all.

4. In view of the above, there is no case for interference in extraordinary jurisdiction. The Order dated 31.01.2007 of this Court shall stand vacated.

N. A. BRITTO, J.

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